

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DONNA BLAKE,)	
)	
Plaintiff,)	
)	No. 4:09-CV-563 CAS
v.)	
)	
EXPRESS SCRIPTS, INC., et al.,)	
)	
Defendants.)	

ORDER

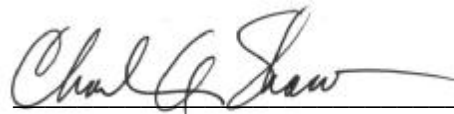
This matter is before the Court on review of the file. Plaintiff filed her First Amended Complaint on June 30, 2009. Rule 15(a)(1)(A) of the Federal Rule of Civil Procedure permits a party to amend her pleading once as a matter of course before she is served with a responsive pleading. A motion to dismiss is not a “responsive pleading” as contemplated by Rule 15(a)(1)(A). See Winfrey v. Brewer, 570 F.2d 761, 764 n.4 (8th Cir. 1978). The Federal Rules of Civil Procedure define pleadings as “a complaint; an answer to a complaint; an answer to a counterclaim . . . ; an answer to a crossclaim; a third-party complaint; [and] an answer to a third-party complaint” Fed. R. Civ. P. 7(a)(1)-(6). Because no responsive pleading to plaintiff’s complaint has been filed or served, plaintiff is permitted to file her First Amended Complaint as a matter of course. Leave of Court or the consent of the defendants is not required. Fed. R. Civ. P. 15(a)(1)(A).

As a result, pending motions pertaining to the original complaint should be denied as moot, see Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002), without prejudice to the filing of motions concerning the amended complaint.

Accordingly,

IT IS HEREBY ORDERED that defendants' motions to dismiss the original complaint are **DENIED as moot** without prejudice. [Doc. 9, 11]

IT IS FURTHER ORDERED that defendants shall file their answers or other responses to the amended complaint within the time permitted by the Federal Rules of Civil Procedure.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of July, 2009.